Clear Channel Outdoor, Inc. *and* International Brotherhood of Electrical Workers, Local 24, AFL–CIO. Cases 5–CA–31623 and 5–CA–31732

March 27, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On March 10, 2005, Administrative Law Judge Arthur J. Amchan issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs, and both parties filed answering briefs and reply briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions and to adopt the recommended Order as modified below.[3]

We affirm the judge's finding that the Respondent violated Section 8(a)(1) and (5) of the Act by subcontracting out bargaining unit work without giving the Union prior notice and an opportunity to bargain over the issue. The General Counsel has excepted to the judge's failure to recommend a make-whole order as a remedy for this violation. We find merit to this exception. Employees testified that they saw subcontractors being assigned work that the employees readily could have performed. Company records also indicate that subcontractors performed unit work during weeks when members of the bargaining unit were not working the maximum number of hours (58) they could have been assigned under the expired contract. Furthermore, the Respondent has a policy of paying both the bill posters and rotary crew members for overtime. In these circumstances, we believe that it is appropriate to include a make-whole remedy in the order, leaving it to the compliance stage to determine what, if any, amount of backpay is owed individual employees.[4]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Clear Channel Outdoor, Inc., Laurel, Maryland, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(b).

"(b) Before subcontracting out any bargaining unit work, notify and, on request, bargain collectively and in good faith with the Union as the exclusive bargaining representative of the employees in the following appropriate unit:

> All full time and regular part time operations department employees of Clear Channel Outdoor, Inc. at its Laurel, Maryland facility, but excluding all office clerical employees, all employees in sales, finance/human

[1] The Respondent has excepted to the judge's denial of its request for copies of affidavits given to the Regional Office by witnesses who were called to testify by the Respondent and not by the General Counsel or the Union. We affirm the judge's denial in accordance with the Board's decisions in *H. B. Zachry Co.*, 310 NLRB 1037, 1038 (1993), and *Kenrich Petrochemicals, Inc.,* 149 NLRB 910, 911 fn. 2 (1964) .

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. Given the Respondent's concession that the subcontracting of bargaining unit work was a mandatory bargaining subject, we find it unnecessary to address the Respondent's additional argument that the judge erred in drawing an adverse inference based on the Respondent's refusal to turn over documents that were relevant to that issue.

We reject the Respondent's assertion that Sec. 10(b) of the Act precludes bringing a complaint on the unilateral subcontracting charges in this case. The December 2003 charges and the General Counsel's complaint are premised on subcontracting that began in October 2003, well within Sec. 10(b)'s 6-month limitation period. The Respondent admits it did not give the Union prior notice or an opportunity to bargain over the subcontracting that began in October. Moreover, in view of the representations made by the Respondent's representatives at the July 2003 bargaining session—to the effect that they were unaware of any subcontracting being done at that time—the Respondent is estopped from arguing that the Union knew before the start of the relevant 10(b) period that the Respondent intended to engage in extensive subcontracting of unit work beginning in October.

We also reject the Respondent's contention that the General Counsel's failure to explicitly define what constitutes "bargaining unit work" precludes finding a subcontracting violation. There is no dispute as to what kind of work was done by the bill posters and the rotary crew members who were in the bargaining unit. According to the Respondent (R. Br. at 2), bill posters post advertising copy on billboards and rotary crew members fasten advertisements to various structures, which is the very work that the Respondent concedes (R. Br. at 6–8) it paid its subcontractors to perform.

[3] We shall modify the judge's recommended Order to conform to the violations found. We shall also substitute a new notice to conform to the modified order and to correct the judge's inadvertent error in incorporating language applicable to a broad order rather than the narrow order being issued here.

[4] We reject the General Counsel's request for an order extending the certification year. In our view the facts in this case do not warrant such extension. In the year following the certification, the parties by joint agreement scheduled and held only two bargaining sessions. The Union does not allege and there is no showing that the Respondent refused or delayed bargaining in general or engaged in surface bargaining. Cf. *St. George Warehouse, Inc.* 341 NLRB 904, 908 (2004), enfd. 420 F.3d 294 (3d Cir. 2005).

resources and realty departments, guards and supervisors."

2. Insert the following as paragraph 2(c) and renumber the remaining paragraphs accordingly.

"(c) Make whole its unit employees for any loss of pay or other benefits they may have suffered as a result of its unlawful conduct in the manner set forth in *Ogle Protection Service*, 183 NLRB 682, 683 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987)."

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT subcontract bill posting, rotary work or other bargaining unit work, or assign such work to nonunit employees, without giving the International Brotherhood of Electrical Workers, Local Union 24 timely notice and an opportunity to bargain.

WE WILL NOT fail to respond in a timely, complete and up-to-date manner to the Union's requests for information regarding the utilization of nonunit employees to perform bill posting, rotary, or other bargaining unit work.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind all subcontracts for bill posting, rotary, and other bargaining unit work and restore the status quo by restoring the unit to where it would have been without these unilateral changes.

WE WILL notify and, on request, bargain collectively and in good faith with the Union as the exclusive bargaining representative of the employees in the following appropriate unit before subcontracting out any bargaining unit work:

All of our full time and regular part time operations department employees at our Laurel, Maryland facility, but excluding all office clerical employees, all employees in sales, finance/human resources and realty departments, guards and supervisors.

WE WILL make whole any bargaining unit employees for any loss of pay or other benefits they may have suffered as a result of our unlawful conduct.

WE WILL provide a timely, complete and up-to-date response to the Union's request for information regarding our use of Quantum employees to perform bill posting, rotary work, and any other bargaining unit work.

CLEAR CHANNEL OUTDOOR, INC.

Thomas P. McCarthy, Esq., for the General Counsel.
Glenn E. Plosa, Esq. (The Zinser Law Firm), of Nashville, Tennessee, for the Respondent.
Gabriel A. Terrasa, Esq. (Singleton & Gendler), of Owings Mills, Maryland, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Baltimore, Maryland, on December 13–17, 2004, and January 4, 2005. The Union, International Brotherhood of Electrical Workers (IBEW), Local 24, filed the charges in this matter on December 2, 2003, and February 10, 2004. The General Counsel issued a consolidated complaint on June 30, 2004.

The General Counsel alleges that, since October 2003, Respondent has been violating Section 8(a)(5) and (1) of the Act by assigning bargaining unit work to nonunit employees of Clear Channel's Quantum division, and to independent contractors. He alleges that this has been done without prior notice to the Union, and without affording the Union an opportunity to bargain with respect to this conduct and its effects. Respondent contends that it has maintained the status quo that existed prior to the Union's certification, that under the expired collective-bargaining agreement it was entitled to subcontract and assign this work to Quantum employees, that the Union waived its bargaining rights and that any violation of Section 8(a)(5) in this regard was de minimus.

The General Counsel also alleges that Respondent violated Section 8(a)(5) by failing to respond in a timely manner to the Union's request for information regarding the performance of bargaining unit work by Quantum employees. Finally, he alleges that Respondent violated Section 8(a)(1) on December 10, 2003, when Operations Director Joseph Kroeger told employees that he was angry about the filing of the charge in Case 5–CA–31623 and interrogated them as to why they had filed the charge rather than speaking directly to him.

On the entire record,[1] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent, and the Charging Party I make the following

FINDINGS OF FACT

I. JURISDICTION

Clear Channel Communications, Inc., a corporation, has a number of divisions, including a broadcast division and an outdoor advertising division. The Respondent in this matter is Clear Channel Outdoor, Inc., the advertising division. Clear Channel Outdoor has approximately 50 branches, including the one involved in this case, the Baltimore/Washington Metroplex in Laurel, Maryland. Branch employees place advertising copy on billboards and similar structures in the Baltimore, Maryland, and Washington D.C. metropolitan areas. In the year prior to the filing of the complaint, Clear Channel Outdoor, Inc., purchased and received goods at its Laurel facility valued in excess of $50,000 directly from points outside the State of Maryland. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, IBEW Local 24, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Historical Background

On January 1, 2001, Clear Channel Outdoor, Inc. purchased the stock of Eller Media Company, which operated an outdoor advertising business from facilities in Baltimore and Hyattsville, Maryland. Respondent legally changed the name of the corporation in July 2001. Employees working out of the Hyattsville office generally worked in the Washington, D.C. metropolitan area; the Baltimore employees generally worked within that metropolitan area and to the north and west. A number of other companies had operated this business prior to Eller Media. The Union has represented a unit of the Baltimore employees since at least 1989.

In the second half of 2001, Respondent moved its Baltimore employees and its Hyattsville (Washington, D.C.) employees into a single facility in Laurel, Maryland, halfway between Baltimore and Washington. These employees included billposters and rotary employees,[2] who were represented by IBEW Local 24 in Baltimore, and by Local 1937 of the International Brotherhood of Painters and Allied Trades in the Washington area. The billposters generally work alone posting advertising copy which is affixed to a wall, sign, or similar surface with glue. The rotary employees work in crews, and generally erect vinyl signs on larger billboards by wrapping the vinyl material around the billboard and securing the sign to the billboard. The rotary employees often use a crane or similar device in placing the advertising copy. Prior to the move to Laurel, there were two rotary crews working in Baltimore and one in the Washington, D.C. area. Soon after the move, only one rotary crew worked in the Baltimore area.

Respondent entered into a collective-bargaining agreement with IBEW Local 24, which ran from February 1, 2001, until January 31, 2002. The agreement continued in effect until January 31, 2003, when it expired. In February 2002, the former Washington, D.C. employees voted to decertify the Painters Union. Afterwards, while the Baltimore employees working out of the Laurel facility were represented by Local 24, the former Washington (Hyattsville) employees were unrepresented.

On January 30, 2003, after an attempt to negotiate a successor collective-bargaining agreement with Respondent, the Union filed a petition with the NLRB to represent all garage, electrical, billposting, and construction (i.e., rotary) department employees at Laurel, which included both former Baltimore and Washington, D.C. employees. The Union won a representation election and was certified on April 8, 2003. The certification was corrected in March 2004, to describe the bargaining unit as all full-time and regular part-time operations department employees. This includes the billposters, rotary crew workers, a bill room attendant, a warehouse attendant, and a mechanic.

On May 5, 2003, Respondent fired three members of the Washington, D.C. rotary crew for falsifying their timecards.[3] Later, it rehired Jason Lynn, one of the terminated employees. Also in about May 2003, Respondent terminated the employment of the Baltimore/Washington Metroplex branch president, Don Scherer. Charles Turner replaced Scherer as branch president in June 2003.

When Turner arrived at the Laurel facility, Johnny Cifolilli was the operations manager of the Baltimore/Washington Metroplex and the Laurel branch of Quantum, a Clear Channel division that builds and upgrades billboards and similar structures.[4] Turner relieved Cifolilli of his responsibilities for the Baltimore/Washington Metroplex (i.e., the posting of advertising copy) and assumed those responsibilities himself. Cifolilli remained the operations manager of the Quantum branch at Laurel, which is housed in the same building as the Metroplex.

In September, Turner hired Joseph Kroeger to be operations manager of the Metroplex. In October 2003, Turner ordered Kroeger to obtain help from other Clear Channel divisions and to develop a network of independent contractors to put up advertising copy. Kroeger sent a mass email to managers of Clear Channel Outdoor and Quantum asking for employees to perform billposting and rotary work. Neither Turner, Kroeger, nor any other representative of Respondent informed the Union that it was doing so.

Pursuant to Kroeger's request, the Quantum division of Respondent loaned Kroeger four employees to perform billposting work in October 2003; three of these employees worked out of the Quantum Laurel facility; one came from a Quantum division in Cleveland, Ohio. Quantum employees also performed billposting work for Respondent during the week of February 9,

[1] There are two versions of volume 1 of the transcript. The latest and more accurate is numbered pp. A1 to 253. Tr. A38,ll. 20 and 21 should read, *Courier Journal.*

[2] Rotary employees are also sometimes referred to as "construction employees."

[3] At pp. 6, 8, and 26 of its brief, Respondent misstates the date of the termination of these employees as March 29, 2002, rather than the correct date of May 2003.

[4] The Laurel branch of Quantum is 1 of 10 such branches.

2004, and performed rotary work throughout the spring and summer of 2004.

On October 22, 2003, Clear Channel Outdoor, Inc. entered into an independent contractor agreement with John F. Flanagan, trading as Rejo & Rash.[5] Flanagan began performing billposting work for Respondent on a recurring basis on or about that date. He continued to do so until October or November 2004.

On December 13, 2003, Clear Channel Outdoor, Inc. entered into an independent contractor agreement with John Klem, doing business as Service Outdoor, Inc. Klem has three employees and his company has performed both rotary and billposting work on a recurring basis for Respondent, primarily in the metropolitan Washington, D.C. area.

Respondent acquired about 450 billboard faces on January 1, 2004 in an asset swap with Next Media Corporation. Afterwards, it owned a total of about 2000 billboard faces. In exchange for its billboards in the Baltimore area, Next Media acquired some of Respondent's billboards in South Carolina. Respondent began using the independent contractors that Next Media had used to place advertising copy on its newly acquired billboards.

On January 7, 2004, Clear Channel Outdoor, Inc. entered into an independent contractor agreement with Coremedia, owned by Walter Feeser. Since that time Coremedia has performed billposting work on a recurring basis for Respondent, as well as rotary work.

On January 30, 2004, Clear Channel Outdoor, Inc. entered into an independent contractor agreement with Lavin Sign Company, owned by Thomas Lavin. Since that time Lavin has performed a high percentage of Respondent's billposting and rotary work in Frederick and Carroll counties, which are located to the northwest of Baltimore (Tr. A168, A505).

None of these independent contractors performed billposting or rotary work for Respondent prior to October 2003. Indeed, Donald Scherer, branch president prior to Charles Turner, instructed his operations manager, Johnny Cifolilli, that he was not to subcontract any billposting or rotary work (Tr. 1150).[6]

Respondent did not notify the Union that it was entering into these contracts or that it was subcontracting significant amounts of billposting and rotary work. It never asked the Union to procure new employees or offered the Union an opportunity to bargain about this subcontracting or its effects.

The rotary crew operating in the Washington, D.C. metropolitan area was involved in a serious traffic accident in March 2004.[7] Since that time most of Respondent's rotary work in the Washington, D.C. area has been done by independent contractors, including Service Outdoor, Inc., Coremedia, and Lavin Sign Company.[8]

B. The Expired Collective-Bargaining Agreement and Respondent's use of Quantum Employees Prior to the Certification of the New Bargaining Unit

Article V, the management-rights provisions of the collective-bargaining agreement between Respondent and the Union, which covered employees who had previously worked out of the Baltimore facility, expired on January 31, 2003. Article V, section 3 (GC Exh. 6, p. 13) provides:

> The Employer shall have the sole and exclusive right to subcontract work. The Employer shall not subcontract, assign or transfer any work covered by this Agreement to any other person, firm or corporation if such subcontracting, assigning or transfer will cause the loss of work opportunities for the employees then employed, except that these restrictions shall not apply where the Employer does not have the equipment, facilities, or qualified employees, to perform the required work or where the performance deadline specified by a customer contract prevents the completion of required work or portions of the work by the employees with the required skills within the time period necessary to assure fulfillment of the contract deadline, provided that those same employees are requested to be on a fifty-eight (58) hours per week work schedule during the time period of the subcontract, assignment or transfer of work. Installation and removal of all equipment relating to the industry will be performed by bargaining unit personnel, except when the mechanical and technical assistance is needed to complete the job.

Section 4 provides:

> No Supervisor, employer, member of the firm or employee excluded from the bargaining unit shall be permitted to perform work covered by this agreement except that it is recognized that it shall be permissible for such persons to perform work under conditions such as the following:
>
> a. in an emergency situation (i.e., injured employee, employees out sick, employees on vacation during heavy workload (this list is by way of example and not exclusive);
>
> b. in the course of instruction or training of employees;
>
> c. work of an experimental or start-up nature;
>
> d. where the remote geographic location of a non-outdoor advertising display causes the changing of advertisements exclusively by bargaining unit personnel to be economically inefficient in the judgment of the Employer. It is further understood that management representatives may assist bargaining unit employees in the performance

[5] The fact that Clear Channel Outdoor, Inc. entered into contracts with several independent contractors to perform billposting and rotary work in the Baltimore/Washington area belies Respondent's contention that only the Baltimore/Washington branch may be designated as a party to this matter. Moreover, Clear Channel Outdoor, Inc.'s executive vice president for operations, Michael Deeds, was one of the members of Respondent's team in collective bargaining with the Union and was present when the Union made the information request at issue in this case.

[6] Scherer was still branch president as of the date of the representation hearing in February or March 2003 (GC Exh. 10, p. 3).

[7] Respondent's brief at p. 32 misstates the date of the accident as March 13, 2003, rather than the correct date in March 2004.

[8] Between March and September 2004, 90 percent of the D.C. rotary work was performed by independent contractors (Tr. 808).

of any required installation and/or maintenance work at "one-sheet" locations.

Section 12 of article V deals specifically with Quantum:

> Eller Media Co. has a division called Quantum. This division fabricates and builds new structures, performs maintenance and safety upgrades on existing structures and other construction type work. Not withstanding any other provision of the parties' collective bargaining agreement, the Company shall have the right to utilize Quantum in any manner described; however Quantum employees will not be used to perform rotation, billposting or garage assignments currently performed by employees covered by this Agreement.

As set forth earlier in this decision, there is no evidence that Respondent subcontracted billposting or rotary work prior to the certification of the Union in the new bargaining unit in April 2003. However, there is evidence that, on occasion, Quantum employees performed such work.

Johnny Cifolilli was operations manager for both the Baltimore/Washington Metroplex and the Quantum branch in Laurel prior to June 2003. He testified to billposting and rotary work performed by Quantum employees with some degree of uncertainty as to whether the work was performed before or after the filing of representation petition (Tr. 1145–1150).

When asked if he was aware of any Quantum employees doing billposting or rotary work, Cifolilli mentioned Larry Lynn and unnamed Quantum employees who worked on a rotary crew changing advertising copy on a wall on Light Street in Baltimore every 45 days on a Saturday. Cifolilli also testified that a Quantum employee from its Salisbury, Maryland office performed billposting work on an unspecified number of occasions. Cifolilli, after some hesitation, testified that Quantum employees worked on the Saturday Light Street rotary crew, every 45 days in "2002 until 2003, the whole time that I was there." It is not clear whether Larry Lynn performed billposting or rotary work other than working on this crew.

Quantum employees apparently performed rotary work in the Baltimore area on September 19 and 21, 2001. On September 19, they were assisted by a Clear Channel employee from Salisbury, Maryland (GC Exh. 9).[9] On October 3, 2001, Respondent's branch president, Don Scherer, wrote Charles Weakley, the Union's business representative, who had met with him a few days previously regarding grievances the Union filed about Respondent's use of Quantum. In his letter, Scherer stated:

> We have opposing views on the Quantum issue (their use in times when I must get the work out and lack the manpower to achieve the installation goals of our advertisers). With that said, I can assure you I will not use them in the future unless all other avenues are exhausted. This includes overtime for the rotary crews. I appreciate your agreeing to look at a win-win compromise to our existing grievances (#3 and #4).
>
> In my offer for compromise I propose the following:
>
> 1. I will offer immediate overtime to any man that lost overtime opportunity during the week of Monday, September 17th through Saturday, September 22nd.
> 2. The overtime will be afforded the men during the week of October 8–12, 2001.
> 3. The use of Quantum or any other outside vendor for the purpose of installation and rotation of billboards will not occur unless the men are offered full overtime opportunity *and* the needs of the advertisers *still cannot* be met with regard to installation dates and rotary moves.
>
> This gesture of compromise should not be interpreted as admittance of any breach of contract mentioned in grievances #3 and #4 [R. Exh. 7].

The Union also attempted to file grievances with Respondent alleging bargaining unit work by nonunit employees on January 12, 18, and March 1, 2002. Respondent refused to process these grievances. In response, the Union filed an unfair labor practice charge, which resulted in the filing of a complaint by the General Counsel on June 28, 2002 (GC Exhs. 9 and 33). Respondent and the Union entered into a non-Board settlement agreement whereby Clear Channel did not admit to violating the Act, but paid seven employees 2 days pay of straight time. Pursuant to this agreement, the Union withdrew its charge (GC Exh. 23).

C. Alleged Failure to Timely Comply with the Union's Information Request (Complaint Par. 13)

On July 30, 2003, representatives of Respondent and the Union met in their first bargaining session since the certification of the Union as collective-bargaining representative for all operations department employees at Laurel. Respondent's attorney, Michael Zinser, and Michael Deeds, the executive vice president for operations of Clear Channel Outdoor, Inc., represented Respondent. Branch Manager Charles Turner briefly attended the session, primarily to introduce himself. The Union was represented primarily by Attorneys John Singleton and Gabriel Terrasa, and Business Representative Charles Weakley.

Terrasa's uncontradicted testimony is that he asked Zinser if Quantum employees were performing unit work. Zinser replied that he didn't know. Zinser asked Deeds, who said he didn't know either. Zinser then said that he would find out if Quantum had performed bargaining unit work and get back to the Union.

Among a series of letters between Terrasa and Zinser is a letter dated October 14, 2003, in which Terrasa forwarded information that Zinser had requested regarding the Union's pension and health insurance plans. Terrasa also wrote:

> Finally, please note that I have not received a response from you regarding the bargaining unit work being performed by employees of Quantum. The Union raised the issue in our prior bargaining session and you indicated you were not aware of it and needed to look into it. I have been informed that Quantum employees continue to perform bargaining unit work. Please indicate what is your client's position on that issue. [GC Exh. 17.]

[9] It is unclear whether this is the same Quantum employee about whom Cifolilli testified or a different employee.

At the next bargaining session, on March 4, 2004, Terrasa mentioned that he had not received the information he had requested regarding Quantum. Zinser stated that he didn't know to what information request Terrasa was referring. When Terrasa mentioned his October 14 letter, Zinser replied that he had never received this letter. At a bargaining session the next day, Terrasa gave Zinser a copy of the October 14 letter and told him that the Union wanted to know what work Quantum was doing in the bargaining unit. Zinser told Terrasa that he would look into the matter.

Six months later on September 28, 2004, Zinser responded. He reiterated that he first received Terrasa's October 14, 2003 letter at the March 5, 2004 bargaining session. Zinser also stated that he believed Respondent did not owe the Union any information at the end of the July 30, 2003 session. With regard to the request, Zinser stated:

> . . . from May 2003 to June 2003, Quantum performed rotary assignments in Washington due to three employee vacancies. Baltimore unit employees were offered the work but declined it.
>
> In the week of October 5, 2003, four employees of Quantum performed billposting for the entire week.
>
> On October 22, 23, and 24, 2003, three individuals from Quantum performed billposting.
>
> This constitutes the full amount of work performed by Quantum in 2003, and more than responds to your July 30, 2003 information request. This performance of billposting by Quantum is in complete conformity with the established status quo and/or past practice. [GC Exh. 19.]

Zinser's letter did not address billposting work performed by Quantum employees during the week of February 9, 2004, or rotary work performed by Quantum employees during the months of May–July 2004 (Tr. A177–180).

D. Alleged 8(a)(1) Violations by Joseph Kroeger on December 10, 2003 (Complaint Pars. 8(a) & (b))

Respondent's operations manager, Joseph Kroeger, conducted two safety meetings for two different groups of employees on the morning of December 10, 2003. One meeting was attended primarily by rotary crew employees and the other by billposters. At the beginning of at least one of these meetings, Kroeger held up the unfair labor charge in Case 5–CA–31623 and told assembled employees either that he was disappointed, upset, angry, or "pissed off" and asked the group why whoever was responsible for the filing of the charge had not spoken to him first before filing the charge.

III. ANALYSIS

A. The Alleged 8(a)(5) Violation

1. Respondent's subcontracting of billposting and rotary work and/or the transfer of such work to nonunit Quantum employees, without notifying the Union and providing it with an opportunity to bargain, violated Section 8(a)(5) and (1)

Generally, when parties, such as Respondent and the Union in the instant matter, are engaged in negotiations for a collective-bargaining agreement, an employer's obligation to refrain from unilateral changes in the wages, hours, and other terms and conditions of employment of bargaining unit employees extends beyond the duty to provide notice to the Union and an opportunity to bargain about a subject matter. It encompasses a duty to refrain from implementing such changes at all, absent overall impasse on bargaining for the agreement as a whole, *Bottom Line Enterprises,* 302 NLRB 373 (1991). There are exceptions to this general rule. When a union engages in tactics designed to delay bargaining or when economic exigencies compel prompt action, an employer may be entitled to implement such unilateral changes. However, even when "economic exigencies compelling prompt action" justify unilateral changes, the employer must provide the union adequate notice and an opportunity to bargain, *RBE Electronics of S.D., Inc.,* 320 NLRB 80, 82 (1995). The prohibition against making unilateral changes during collective-bargaining negotiations only applies to mandatory subjects of bargaining.

2. Respondent conceded that the subcontracting and assignment of billposting and rotary work to nonunit employees in the instant case is a mandatory subject of bargaining. Moreover, Respondent is estopped from arguing that its decision, to subcontract and/or transfer billposting and rotary work to nonunit employees, is not a mandatory subject of bargaining

On December 1, 2004, the General Counsel served a subpoena duces tecum on Charles Turner, the president of Respondent's Baltimore/Washington branch, directing Turner to bring numerous documents to the December 13, 2004 hearing. Respondent filed a petition to revoke many portions of the subpoena on December 9, 2004.

Paragraph 43 of the subpoena duces tecum required Turner to bring the following documents to the hearing:

> All documents since June 1, 2000, which set forth Respondent's policy concerning assignment of IBEW, Local 24 bargaining unit work and/or the subcontracting or assignment of such work to individuals outside the bargaining unit, including all documents that show or indicate the business reason(s) and/or labor cost considerations that motivated Respondent's decision(s) to subcontract or assign bargaining unit work to employees outside the bargaining unit, including the names of all individuals of Respondent or from Respondent's Quantum division, who made or participated in each decision to subcontract or assign bargaining unit work to employees outside the bargaining unit. Also requested are any and all documents disclosing Respondent's communications with the [Union] regarding these subcontracting and assignment decisions and policies.

Respondent sought revocation of paragraph 43 in part on the grounds that the documents requested were not relevant to the proceeding. I did not grant Respondent's petition to revoke with regard to the documents requested in paragraph 43. Three and half hours were spent on the first day of the hearing discussing Respondent's petition. Respondent's counsel insisted that its motives for subcontracting were irrelevant and repeatedly resisted producing the documents requested in paragraph 43. Ultimately, the General Counsel agreed not to demand production of these documents on the understanding that Re-

spondent's subcontracting in this case was a mandatory subject of bargaining. I draw an adverse inference from Respondent's refusal to produce the subpoenaed documents that they would show that labor cost considerations were a material consideration in its decision to subcontract bargaining unit work and assign such work to Quantum employees, rather than rehire unit employees who had been terminated, hire new employees, or increase the amount of work offered to unit employees.[10]

Moreover, with four exceptions, Respondent waived any contention that it had a right to subcontract and/or assign billposting and rotary work to Quantum employees without notifying the Union and offering it an opportunity to bargain. These exceptions are: (1) that it maintained the status quo; (2) that it was entitled to subcontract and assign such work to Quantum employees by virtue of the management rights article in the expired collective-bargaining agreement; (3) the Union waived its right to bargain over subcontracting and transfer of unit work to Quantum employees; and (4) to the extent it violated the Act, the violation was de minimus (Tr. A23, A27, A30, A31, A35, A97–A102; 1198–1204).

3. Respondent's subcontracting and assignment of billposting and rotary work to nonunit employees is a mandatory subject of bargaining under longstanding Board precedent

In *Torrington Enterprises,* 307 NLRB 809 (1992), the Board rendered a comprehensive opinion on the issue of whether the unilateral subcontracting of bargaining unit work is a mandatory subject of bargaining and thus violative of Section 8(a)(5) and (1). Interpreting the U.S. Supreme Court decisions in *Fibreboard Corp. v. NLRB,* 379 U.S. 203 (1964), and *First National Maintenance Corp. v. NLRB,* 452 U.S. 666 (1981), the Board held that Torrington violated the Act in laying off two bargaining unit employees and replacing them with nonunit employees and independent contractors—without giving prior notice to the union and providing the union with an opportunity to bargain about the decisions and their effects on the unit employees.

The *Torrington* Board found that since respondent's decision to subcontract and transfer work to a nonunit employee had nothing to do with a change in the scope and direction of its business, but merely changed the identity of the employees doing the work, it was required to provide the union with notice and an opportunity to bargain before making such decisions. The Board reiterated this view in *Acme Die Casting,* 315 NLRB 202 (1994). Member Cohen, who had not been on the *Torrington* Board, emphasized that he did not read *Torrington* as broadly as his colleagues. He opined that subcontracting is only a mandatory subject of bargaining if based on matters that are amendable to collective bargaining, such as labor costs.

In *Dorsey Trailers, Inc.,* 321 NLRB 616 (1996), enf. denied 134 F.3d 125, 130 (3d Cir. 1998), the Board, with one member dissenting, also found that the employer violated the Act in subcontracting without giving the union notice and an opportunity to bargain. The Board found that the decision to subcontract was motivated in part by labor costs, i.e., a desire to reduce overtime to zero. This Board deemed the subcontracting to be a mandatory subject of bargaining because it had merely shifted work from unit employees to subcontractor employees without changing the nature of the work, and therefore without changing the scope or direction of its business. Member Cohen, dissenting in part, opined that the record did not support a finding that Respondent's motive for subcontracting was reducing overtime and that unless a decision to subcontract was motivated by such labor-cost considerations, it was not a mandatory subject of bargaining.

In *Overnite Transportation Co.,* 330 NLRB 1275 (2000), another Board majority held that subcontracting, motivated by nonlabor cost considerations, may not be a mandatory subject of bargaining in cases in which the decision relates to a change in the scope and direction of the employer's business. This Board also found that a decision to subcontract may be a mandatory subject of bargaining even when no current unit employees lose their jobs.

> We think it plain that the bargaining unit is adversely affected whenever bargaining unit work is given away to nonunit employees, regardless of whether the work would otherwise have been performed by employees already in the unit or by new employees who would have been hired into the unit. [330 NLRB at 1276.]

Member Hurtgen dissented, opining that, "*Torrington Industries* was wrongly decided."[11] He stated further that the Board must weigh the benefit for labor-management relations and the collective-bargaining process against the burden placed on the conduct of the employer's business. Given the fact that none of the Overnight employees were replaced or laid off, Overnight was not required, in Member Hurtgen's view, to notify the Union or offer it the opportunity to bargain over its decision to subcontract.

In two very recent decisions, *Sociedad Espanola de Auxilio Mutuo y Beneficencia, de P. R.,* 342 NLRB 458 (2004), and *St. George Warehouse, Inc.,* 341 NLRB 904 (2004), the current Board has reaffirmed the holdings in *Torrington, Dorsey, and Overnite. St. George Warehouse* involves facts very similar to the instant case. Sometime after the union won a representation election, St. George decided to stop hiring new employees and

[10] Respondent also refused to turn over documents not in the possession of the Baltimore/Washington branch, including documents in the possession of Quantum and Clear Channel Outdoor, Inc. It's refusal to do so has no merit. In responding to a subpoena, an individual is required to produce documents not only in his or her possession, but any documents that he or she had a legal right to obtain, Compare*, Searock v. Stripling,* 736 F.2d 650, 653 (11th Cir. 1984); *Resolution Trust Corp. v. Deloitte & Touche,* 145 F.R.D. 108 (U.S.D.C. D. Co. 1992) (the standard under Rule 34 of the Federal Rules of Civil Procedure). Pursuant to Sec. 8(a)(5), an employer must at least demonstrate that it is unable to obtain documents that are not in its possession that are the subject of a union's information request; compare*, Congresso de Uniones Industriales de Puerto Rico v. NLRB,* 966 F.2d 36 (1st Cir. 1992); *United Graphics,* 281 NLRB 463 (1986) (an employer's obligation in responding to a union information request).

[11] The United States Court of Appeals for the Third Circuit has rejected the *Torrington* formulation at least twice, *Furniture Rentors of America, Inc. v. NLRB,* 36 F.3d 1240 (3d Cir. 1994); *Dorsey Trailers, Inc. v. NLRB,* 134 F.3d 125 (3d Cir. 1998). Nevertheless, I am obligated to adhere to NLRB precedent.

to use temporary agency employees instead. As unit employees quit or were fired for cause, St. George did not replace them. As a result, the bargaining unit decreased from 42 to 8 within a very short period of time. Judge Stephen Davis, whose decision was affirmed by the Board with regard to this issue, wrote:

> The Respondent's actions in substituting agency employees for its bargaining unit employees as they leave their employment will make it possible for it to eliminate the existing bargaining unit and dilute its bargaining strength. Eventually . . . as each unit employee leaves his job, a temporary agency worker will replace him. Ultimately, the unit will be eliminated. Absent discriminatory intent, nothing in the law prevents the Respondent from making and implementing that decision. What the law requires is that it first offer to bargain about such a decision. [341 NLRB 904, 1014–1015.]

In the instant case, no employee lost his job due to subcontracting or use of Quantum employees. Also, it appears that no current employee suffered a loss of wages. However, there were issues amenable to the collective-bargaining process. For one thing, Respondent and the Union could have negotiated an increase in the number of bills to be posted by each billposter. Secondly, Respondent and the Union could have negotiated regarding offering reemployment to bargaining unit members who had been terminated. Employees Matthew Donnick, Leonard Ramsey, and Jason Lynn were terminated on May 10, 2003. However, Respondent indicated that each of these employees was eligible for rehire and indeed it rehired Lynn. Had Respondent offered the Union an opportunity to bargain over subcontracting, it is possible that it could have recalled Donnick and Ramsey and possibly other employees, rather than subcontracting what had previously been bargaining unit work, *University of Pittsburgh Medical Center,* 325 NLRB 443 (1998), enfd. 182 F.3d 904 (3d Cir. 1999).[12]

4. Respondent's justifications for subcontracting and assigning bargaining unit work to nonbargaining unit employees, without providing the Union notice and an opportunity to bargain, are without merit

Respondent implemented material changes after the certification of the Union both with regard to subcontracting and the use of Quantum employees to perform bargaining unit work.

I turn now to Respondent's contentions. As noted earlier, Respondent articulates four reasons for which it argues it was entitled to subcontract and assign unit work to Quantum employees without notifying the Union and offering it an opportunity to bargain. The first contention is that Respondent was merely maintaining the status quo that existed prior to certification. In this regard, there is no evidence that Respondent subcontracted bargaining unit work prior to the certification of the Union in April 2003. The widespread use of subcontractors was initiated in October 2003, by Joseph Kroeger at the direction of Branch President Charles Turner. Respondent's use of Quantum employees prior to the certification was very limited and several instances was the subject of grievances and unfair labor practices charges, which were settled by Respondent. Thus, I conclude Respondent cannot rely on these isolated instances of its prior use of Quantum to establish a past practice that it was entitled to continue without prior notice and an opportunity to bargain.

5. Respondent was not entitled to subcontract or assign bargaining unit work to Quantum employees pursuant to its collective-bargaining agreement with the Union, after that agreement had expired

A management-rights clause in a collective-bargaining agreement and any waivers contained therein do not survive the expiration of the contract—absent some evidence of the parties' intentions to the contrary. Thus, any waiver of a union's bargaining rights that relies on a management rights clause, such as the one instant case, is limited to the time the contract is in force, *Furniture Rentors of America,* 311 NLRB 749, 751 (1993), enf. denied 36 F.3d 1240 (3d Cir. 1994); *Pan American Grain Co.,* 343 NLRB 318 (2004). There is no evidence in this case that the parties intended that the waivers contained in the management-rights provisions would survive the expiration of their collective-bargaining agreement on January 31, 2003.

6. There is no evidence that the Union waived its right to bargain over the subcontracting of bargaining unit work or the assignment of such work to Quantum employees after the certification of the Union

To be effective, a waiver of statutory bargaining rights must be clear and unmistakable. Wavier can occur in any of three ways, by express provision in a collective-bargaining agreement, by the conduct of the parties (including past practices, bargaining history, and action or inaction) or by a combination of the two. In a case where the parties have not concluded their first collective-bargaining agreement, the Board decides the waiver issue solely on the evidence of the parties' conduct, *American Diamond Tool,* 306 NLRB 570 (1992).

In the previous subsection, I have dismissed Respondent's argument that it was entitled to subcontract bargaining unit work and assign it to Quantum employees because the terms of the parties' expired collective-bargaining agreement constituted a waiver. Nothing in the record permits the inference that the Union waived its bargaining rights on the basis of its conduct.

On July 30, 2003, in its first bargaining session with Respondent following certification, the Union submitted a proposed collective-bargaining agreement (GC Exh. 19(c)). The Union's proposal differed significantly from the expired agreement with regards to subcontracting and the use of nonunit employees to perform bargaining unit work.

[12] Respondent fired Robert Glenn Hall, a unit billposter, who had worked for 13 years for Respondent and its predecessors, in December 2003. His termination notice indicates that he is not eligible for rehire. However, it is unclear how his violation of company policy and dishonesty differs materially from that of Jason Lynn, who Respondent rehired.

Earl Williams, who performed billposting work for subcontractor Service Outdoor, is apparently a former bargaining unit member who had also been terminated. The parties could have negotiated the rehiring of Williams as a bargaining unit member, as opposed to having him performing bargaining unit work as an employee of a subcontractor.

Section 2.05 of the Union's proposal (GC Exh. 19(c), p. 7) is entitled, "work preservation" and essentially proposes to make the terms of the collective-bargaining agreement applicable to all bargaining unit work performed by employees whose employer has any relationship with Respondent, such as Quantum. Section 2.09 (p. 9) proposes to prohibit any subcontracting of bargaining unit work to anyone not recognizing the IBEW or one of its local unions as the collective-bargaining representative of its employees.

Thus, the Union clearly preserved its bargaining rights on the issues of subcontracting and use of Quantum employees to do bargaining unit work. Moreover, an employer cannot implement a change and then claim that a union waived its right to bargain by failing to do so retroactively, *Intersystems Design Corp.,* 278 NLRB 759 (1986). "To be timely, the notice must be given sufficiently in advance of actual implementation of the change to allow a reasonable opportunity to bargain," *Ciba-Geigy Pharmaceuticals Division,* 254 NLRB 1013, 1017 (1982).

In the instant case, Respondent failed to give the Union timely notice of its decision to subcontract or to assign bargaining unit work to Quantum employees. Respondent never notified any union official of its decision to subcontract bargaining unit work. Some rank-and-file employees noticed that John Flanagan was doing billposting work in October or November 2003.[13] However, by that time, Respondent had decided to enter into a contractual relationship with Flanagan and may have already executed the contract. Under these circumstances, I find that Respondent presented the Union with a "fait accompli" and that therefore Respondent is precluded from justifying its subcontracting decision on the failure of the Union to renew its request to bargain over the subcontracting of bargaining unit work, *Pontiac Osteopathic Hospital,* 336 NLRB 1021, 1023–1024 (2001).

Insofar as Quantum is concerned, the Union had an outstanding information request regarding the use of Quantum employees to perform bargaining unit work in October 2003, when Respondent made its first use of these employees since the certification. As Respondent had failed to comply with the Union's request for information on this issue, it is precluded from asserting a waiver of its bargaining rights by the Union. Moreover, section 2.05 of the Union's July 30, 2003 proposal establishes that the Union was not waiving its right to bargain over Respondent's use of Quantum employees to perform billposting or rotary work.[14]

7. Respondent's failure to offer the Union an opportunity to bargain prior to subcontracting bargaining unit work was a material and substantial violation of the Act

Respondent contends that to the extent it may have violated Section 8(a)(5), such violation was not material and substantial, but to the contrary was de minimus. I conclude otherwise. Respondent's failure to offer the Union an opportunity to bargain denied the unit billposters of the potential to work longer hours, post more bills, and increase their earnings. Moreover, it denied the Union the opportunity to bargain about recalling previously terminated employees, some of whom were, by Respondent's determination, eligible for rehire. Finally, by not providing the Union with an opportunity to bargain about the preservation of what had been bargaining unit work at the time of its certification, Respondent materially undercut the Union's negotiating strength, *St. George's Warehouse*, supra*, Overnite,* supra.

8. Respondent's use of Quantum and its subcontracting was not justified by extraordinary events which required prompt action negating its obligation to give notice and an opportunity to bargain

Respondent's business is the *timely* posting of advertising copy. As Respondent's brief concedes at page 38, "this standard was nothing new." That Respondent often fell behind in posting bills and rotating advertising copy was also nothing new. There was no economic emergency that required Respondent to bypass the Union and unilaterally shift bargaining unit work to subcontractors. After firing three unit members of the D.C. crew in May 2003, Respondent initially used Quantum employees to perform much of their work. Then, apparently in response to the Union's inquiries on July 30, 2003, Respondent stopped utilizing Quantum employees for this purpose and indeed hired two Quantum employees, Russell Mellion and Darryl Jones, into the bargaining unit in September 2003 (GC Exh. 33; Tr. 1096).[15] In October 2004, Respondent hired billposter Larry MacDonald, who transferred either from Respondent's or Quantum's office in Orlando, Florida (Tr. 545, 683).

In October 2003, Respondent attempted to use Quantum employees to perform billposting for a very short period of time and then resorted to wholesale subcontracting of unit work without notifying the Union. Then following the accident in March 2004, it increased its use of subcontractors, instead of, for example, negotiating with the Union about rehiring some of the unit members it had terminated in May 2003.[16]

[13] Union Steward Gerry Michael testified that he heard rumors that Respondent was using independent contractors prior to December 2003, but did not have firsthand knowledge of this fact until December when he encountered John Klem and Earl Williams at Respondent's Laurel facility.

[14] At pp. 32 and 33 of it's brief, Respondent argues that portions of the complaint should be dismissed pursuant to Sec. 10(b) of the Act. This argument is based on the erroneous statement that the D.C. crew's accident occurred in March 2003. In fact this accident occurred in March 2004, several months after the Union filed its charge regarding the use of subcontractors.

[15] Contained in GC Exh. 111 are several work orders for D.C. rotary work performed by Darryl Jones and Russell Mellion between August 7 and September 3. The year is not noted on the documents. According to GC Exh. 33, Jones and Mellion first appear on Respondent's payroll for the pay period ending September 17, 2003. From this I infer that Jones and Mellion performed rotary work in D.C. as Quantum employees for about a month and then were transferred to Respondent's payroll.

[16] At pp. 38 and 39 of its brief, Respondent contends that subcontracting was necessitated by the number of employees who went on workers compensation in late 2003 and early 2004. However, this argument has no merit since Respondent began subcontracting unit work without notifying the Union in October 2003, before any of these employees stopped working due to injuries or physical ailments. At p.

9. Respondent violated Section 8(a)(5) and (1) in not timely responding to the Union's request for information about billposting and other bargaining unit work performed by Quantum employees

An oral request for information is sufficient to obligate an employer to provide a union with information relevant to its collective-bargaining responsibilities. Gabriel Terrasa's testimony that he made such a request to Respondent's attorney, Michael Zinser, at the July 30, 2003 bargaining session is uncontroverted. It is also uncontroverted that Respondent did not respond to this request until September 2004, 14 months later, and 6 months after Terrasa had followed up his oral request for this information in writing. Moreover, Respondent provided no information regarding the bargaining unit work performed by Quantum employees between January 1 and September 2004. I conclude that this response was not timely and that an employer answering the request in good faith would also have addressed the substantial amount of billposting and rotary work performed by Quantum employees in 2004. For both reasons, I conclude that Respondent violated Section 8(a)(5) in not responding fully and in a timely manner to the Union's information request.[17]

10. Respondent, by Operations Manager Joseph Kroeger, did not coerce employees in the exercise of their Section 7 rights by expressing his anger at the filing of the first unfair labor practice charge in this case

Operations Manager Kroeger, by expressing his anger at the filing of the Union's December 2, unfair labor practice charge did not restrain, coerce, and interfere with employees' Section 7 rights in violation of Section 8(a)(1). Kroeger did not inquire as to whether any particular employee initiated the filing of the charge and made no attempt to interrogate employees individually. Moreover, he made no effort to obtain the withdrawal of the charge. In such circumstances, I conclude that his expression of anger or disappointment does not constitute a violation of Section 8(a)(1).

40 of its brief, Respondent intimates that it attempted to procure labor through the Union. The portion of the record cited, Tr. 1098–1099, does not support this assertion.

Finally, Respondent's citation to Business Representative Weakley's testimony at Tr. 947–949 is not entirely accurate. Weakley did not say the Union could not provide Respondent with "qualified employees." He conceded that it does not provide its members with training specific to the tasks of a billposter or a rotary worker. However, he also testified that the Union may have members, who formerly worked for Respondent, who have had training in these tasks.

[17] Moreover, on March 5, 2004, the Union's attorney, Gabriel Terrasa, told Respondent's attorney, Zinser, "that we wanted to know what work Quantum was doing in the bargaining unit." (Tr. 275.) This constitutes a separate request for information to which Respondent was obligated to respond. Given the fact that I find that Respondent was obligated to provide an up-to-date response to the Union's initial request for information, I find it unnecessary to decide whether Respondent's failure to respond to Terrasa's March 5, 2004 request for information was a separate violation of Sec. 8(a)(5) that was tried by consent.

CONCLUSIONS OF LAW

1. Respondent violated Section 8(a)(5) and (1) of the Act by subcontracting bargaining unit work and assigning unit work to nonunit employees without providing the Union notice and an opportunity to bargain.

2. Respondent violated Section 8(a)(5) and (1) by failing to timely respond to the Union's request for information regarding its use of Quantum employees to do billposting and rotary work and in failing to provide up-to-date information on this subject when it did respond.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[18]

ORDER

The Respondent, Clear Channel Outdoor, Inc., Laurel, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally subcontracting billposting, rotary work, and other bargaining unit work, and from utilizing nonunit employees to do such work without giving the International Brotherhood of Electrical Workers, Local Union 24, notice and an opportunity to bargain.

(b) Failing to provide a timely and complete and up-to-date response to the Union's request for information regarding the utilization of nonunit employees to perform billposting, rotary, or other bargaining unit work.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind all its subcontracts for billposting, rotary work, and other bargaining unit work and restore the status quo by restoring the unit to where it would have been without the unilateral changes.

(b) Before implementing any changes in the wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain collectively and in good faith with the Union as the exclusive bargaining representative of all full-time and regular part-time operations department employees of Respondent at its Laurel, Maryland facility, but excluding all office clerical employees, all employees in sales, finance/human resources and realty departments, guards, and supervisors.

(c) Provide the Union with the information it requested regarding its use of Quantum employees to perform billposting,

[18] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

rotary work, and any other bargaining unit work up to the date of this order.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Laurel, Maryland facility, copies of the attached notice marked "Appendix."[19] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 30, 2003.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[19] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."